

IN THE COUNTY COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT COURT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CRIMINAL DIVISION

STATE OF FLORIDA

-vs-

SANDRA BATES,  
  
Defendant.

CASE NUMBER: 96-021011TC A04

**ORIGINAL**

MOTION TO SUPPRESS

PRESIDING: HONORABLE NELSON BAILEY

APPEARANCES:

ON BEHALF OF THE STATE OF FLORIDA:  
BARRY KRISCHER, ESQUIRE  
State Attorney  
401 North Dixie Highway  
West Palm Beach, Florida 33401  
BY: DALIAH HANDEL, ESQUIRE  
Assistant State Attorney

ON BEHALF OF THE DEFENDANT:  
MAYNARD S. PELOKE, ESQUIRE  
433 Plaza Real, Suite 275  
Mizner Park  
Boca Raton, Florida 33432

Wednesday, April 23, 1997  
Palm Beach County Courthouse  
205 North Dixie Highway  
West Palm Beach, Florida  
Beginning at 1:30 o'clock p.m.

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Ofc. Rosalyn Jordan	4			
Rick Swope (Voir Dire) 31	13	47		
Ofc. Lewis Berry (Voir Dire) 61	55	73	85	

E X H I B I T S

STATE EXHIBIT NUMBER	IDENTIFICATION	EVIDENCE
----------------------	----------------	----------

DEFENDANT EXHIBIT NUMBER

STATE RESTS		86
DEFENSE RESTS		86
CLOSING ARGUMENT BY MS. HANDEL		87
CLOSING ARGUMENT BY MR. PELOKE		94
REBUTTAL ARGUMENT BY MS. HANDEL		101

1 BE IT REMEMBERED that the following proceedings  
2 were had in the above-entitled cause before the  
3 HONORABLE NELSON BAILEY, one of the Judges of the  
4 aforesaid Court, at the Palm Beach County Courthouse,  
5 located in the City of West Palm Beach, State of Florida,  
6 on the 23rd day of April, 1997, beginning at 1:30 o'clock  
7 p.m., with appearances as hereinbefore noted, to-wit:

8 THE COURT: Who is -- Counsel, announce your  
9 presence, for the record, for this case.

10 Prosecutor will be -- ?

11 MS. HANDEL: Me, Ms. Handel.

12 THE COURT: And --

13 MR. PELOKE: Your Honor, I'm Maynard Peloke  
14 for the defendant, Sandra Bates.

15 THE COURT: Okay.

16 MR. PELOKE: Who is present.

17 THE COURT: I did not bring my copy of the  
18 Motion with me. Do you have a copy there in the  
19 file?

20 THE CLERK: Let me see.

21 THE COURT: Everybody agree as to the burden  
22 of proof here?

23 -- MR. PELOKE: Yes, Your Honor.

24 THE COURT: Which is on the State?

25 MR. PELOKE: Correct, Your Honor.

1 THE COURT: Okay.

2 All right, State?

3 MS. HANDEL: Your Honor, the State would call  
4 Officer Jordan. Let me go out and get her.

5 THE COURT: Sure.

6 OFFICER JORDAN,

7 after being called as a witness by the State and after  
8 being first duly sworn by the Clerk of the Court, was  
9 examined and testified as follows:

10 THE WITNESS: Yes.

11 THE COURT: Go ahead and take a seat up there.

12 MS. HANDEL: Good afternoon.

13 DIRECT EXAMINATION

14 BY MS. HANDEL:

15 Q. Would you please state your name?

16 A. Rosalyn Jordan.

17 Q. Where are you employed?

18 A. City of Boca Raton Police Department.

19 Q. How long have you been employed there?

20 A. Since July of '94.

21 Q. In what capacity?

22 A. As a police officer.

23 --Q. Were you so employed on June 15, 1996?

24 A. Yes.

25 Q. Were you on duty?

1 A. On that date? Yes.

2 Q. Were you in uniform?

3 A. Yes.

4 Q. Were you in a marked patrol vehicle?

5 A. Yes.

6 Q. Did you have occasion to go to North Federal  
7 Highway in Boca Raton?

8 A. Yes.

9 Q. And --

10 THE COURT: Let me ask a question. I'm -- is  
11 there one -- how many motions are there? There's  
12 one.

13 MR. PELOKE: There's one, correct, Your Honor.

14 THE COURT: What -- this is the arresting  
15 officer, essentially.

16 MS. HANDEL: Yes.

17 THE COURT: What issue can she address?

18 MS. HANDEL: Just that she had arrested the  
19 defendant for DUI, just to --

20 THE COURT: Well, for purposes of this Motion,  
21 only, there's not a question --

22 MR. PELOKE: No, there's not. I would  
23 --stipulate to that.

24 MS. HANDEL: Okay.

25 THE COURT: Okay.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. HANDEL: Then, we have -- if there's a stipulation, then, we can just wait for the breath tests.

THE COURT: Okay. Do you need anything from this officer concerning the twenty-minute period or any of the other -- doesn't sound like it, from the content of the Motion.

BY MS. HANDEL:

Q. Were you present during the twenty-minute observation period?

A. I would have been within the booking area.

THE COURT: Would you be there or would the -- one of the breath -- or the breath tech be doing it?

THE WITNESS: The breath tech would be doing that.

THE COURT: Okay.

THE WITNESS: Making the observation.

THE COURT: Okay.

MS. HANDEL: Okay, then, we have no further questions for this witness.

MR. PELOKE: Your Honor, if I may?

THE COURT: Sure.

MR. PELOKE: I just wanted to inform the Court that the video shows, indisputably, that, after --

1 MS. HANDEL: Okay.

2 THE COURT: It's up to you. If you want to  
3 call him off, I'll give you a moment to call him  
4 off, but I would think you'd want to wait and see  
5 what -- how the issues develop.

6 MS. HANDEL: He's on his way. Let's just go  
7 ahead and --

8 THE COURT: Okay.

9 Why don't you go ahead and set up the  
10 video?

11 Are we finished with this officer? Did  
12 you want --

13 MR. PELOKE: Yes, Your Honor.

14 THE COURT: -- any cross?

15 MR. PELOKE: No, I'm reserving, if we go to  
16 trial, of course, but nothing --

17 THE COURT: Well, I'm sure, if we go to  
18 trial --

19 MR. PELOKE: She's not involved in the  
20 Breathalyzer.

21 THE COURT: Okay, for purposes of this Motion,  
22 there's no cross.

23 MR. PELOKE: Correct, Your Honor.

24 THE COURT: Okay, Officer, you're excused.

25 THE WITNESS: Thank you.

1 THE COURT: Well, I understand what the video  
2 shows.

3 MR. PELOKE: But I'm saying, there may not be  
4 but a need for the technician to testify. They  
5 could go right to their expert witness, because  
6 there's no dispute that, after the Breathalyzer  
7 tests were administered, that --

8 THE COURT: You've got your witness here,  
9 anyway, right now, right?

10 MS. HANDEL: Not the breath tech.

11 THE COURT: Okay.

12 For purposes of this hearing, will you  
13 stipulate the video in?

14 MR. PELOKE: Yes, I would, Your Honor.

15 THE COURT: You want to do it that way, let me  
16 just go ahead and watch the video?

17 MS. HANDEL: If I can have a moment to call  
18 off this officer, then? Because, he --

19 THE COURT: Well, are you sure you want to  
20 call him off? We'll look at the video. You don't  
21 have to have him for his -- to see the video, but I  
22 don't know if you may want him still.

23 MS. HANDEL: Do you have a copy of the  
24 videotape?

25 MR. PELOKE: I do.



1 THE COURT: Thank you for being here.

2 (Witness excused.)

3 MR. PELOKE: Your Honor, if I may?

4 THE COURT: Yes.

5 MR. PELOKE: I don't think there's any factual  
6 dispute, in terms of the video. It clearly shows  
7 that, after the tests were administered, the  
8 technician asked the defendant if she wears  
9 dentures, and she answered in the affirmative. At  
10 that time, no effort was made to retest her. And,  
11 basically, this is going to be an issue for the  
12 experts here. So, I would even stipulate they  
13 wanted to --

14 THE COURT: Well, the technician is not one of  
15 the "experts".

16 MS. HANDEL: We have Officer Berry here.

17 THE COURT: Okay. From the content of the  
18 Motion and from what he's saying, it sounds to me  
19 like the basic facts are non-discretè, is that  
20 correct?

21 MS. HANDEL: That is correct.

22 THE COURT: What happened to him.

23 MS. HANDEL: That's correct.

24 THE COURT: It's the interpretation of what's  
25 required under the regulations, in light of that.

1 MS. HANDEL: That's --

2 MR. PELOKE: Correct.

3 MS. HANDEL: That's correct.

4 THE COURT: Okay. That's why I wanted -- if  
5 you want to -- I'm going to take a minute. I'll be  
6 right back. And you can go ahead and call your  
7 officer, if you want. We'll play the tape when we  
8 get back here. If you want to have him set that  
9 up, go ahead.

10 (The Court was in recess and the following  
11 proceedings were had:)

12 THE COURT: Is there going to be anything on  
13 this arthritis, knee injury issue? Is that going  
14 to be --

15 MR. PELOKE: Your Honor, I think that's  
16 probably going to be an issue of fact, where you'll  
17 consider the weight of that evidence.

18 THE COURT: All right. That would be my  
19 initial impression right now. So, that'll be an  
20 issue we'll deal with at trial.

21 Ready?

22 MS. HANDEL: Yes.

23 THE COURT: Okay, let me ask you, as I  
24 --understand it, what you're agreeing is, she's  
25 stopped for DUI. She's given the roadside

1 performance tasks to do. She's brought in for a  
2 Breathalyzer examination. After the Breathalyzer  
3 tests -- the two tests are done, she's answering  
4 the questions that are asked and, in the process,  
5 she reveals that she's wearing dentures. At that  
6 point, no retesting or reuse of the twenty-minute  
7 observation, or anything else, is done.

8 MR. PELOKE: Correct, Your Honor.

9 THE COURT: And those are the given essential  
10 facts, is that correct, State?

11 MS. HANDEL: That's correct.

12 THE COURT: Okay. And the only issue before  
13 me, then, is really a legal issue.

14 MS. HANDEL: That's correct.

15 THE COURT: Which is, under the regulations,  
16 are they required to retest, at that point, to have  
17 an admissible -- a valid and admissible test or  
18 not.

19 MS. HANDEL: Did the officer err in not  
20 retesting --

21 THE COURT: But is it the Defense position  
22 that this is required by the regulations?

23 MR. PELOKE: That's not only the Defense's  
24 position, Your Honor, but, in addition to that,  
25 we're going to have expert testimony to decide that

1 either --

2 THE COURT: That it's scientifically required.

3 MR. PELOKE: -- it's scientifically --

4 THE COURT: Right, I understand.

5 Okay, well, let's just address that  
6 issue, then.

7 Are you calling evidence on that?

8 MR. PELOKE: Yes, I am, Your Honor.

9 THE COURT: Is the State going to call any  
10 witnesses on that issue?

11 MS. HANDEL: We have an expert.

12 THE COURT: Okay, who wants to go first? Do  
13 you guys agree to either one of them going first?

14 MR. PELOKE: My expert's here and ready, Your  
15 Honor. That would expedite this proceeding.

16 THE COURT: Okay.

17 And yours is still coming. Are you --  
18 no, you have one here.

19 MS. HANDEL: No, ours is here, also, but the  
20 Defense can go first.

21 THE COURT: Do it.

22 MR. PELOKE: Thank you, Your Honor.

23 MR. PELOKE: The Defense would like to call  
24 -Rick Swope, Your Honor.

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

RICK SWOPE,

after being called as a witness by the Defense and after being first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: By the way, Counsel, do you have a copy of the rule or regulation that you're relying upon?

MR. PELOKE: Yes, I do, Your Honor.

THE COURT: Okay.

All right, you may proceed, Counsel.

MR. PELOKE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. PELOKE:

Q. Mr. Swope, could you state your full name and spell your full name for the record, please?

A. Rick Swope, S-w-o-p-e.

Q. And can you state your address, please?

A. 2941 Southwest 87th Avenue, in Davie, Florida. That's my home and office, and I have an office in Atlanta, Georgia, at 1355 Peach Tree Street Northeast, Suite 150, Atlanta.

Q. And what's the nature of your employment?

A. I do primarily accident reconstruction. About ten percent of my business encompasses doing scientific

1 studies on the Intoxilyzer breath-testing or field tasks.  
2 I also do lectures. I teach. I guest-lecture at various  
3 universities. I do contracts with universities, those  
4 types of things.

5 Q. Specifically --

6 THE COURT: Guest-lecturer on what subjects?

7 THE WITNESS: The Breathalyzer or field  
8 sobriety exercises.

9 BY MR. PELOKE:

10 Q. Specifically as to the Intoxilyzer 5000 and  
11 breath alcohol concentrations in DUI cases, what are your  
12 qualifications to testify as an expert, sir?

13 A. Well, I first got into breath-testing and --

14 THE COURT: Do you have one of those -- what  
15 do they call --

16 MR. PELOKE: Curriculum vitae?

17 THE COURT: Vitae?

18 MR. PELOKE: Yes, I do, Your Honor.

19 THE COURT: Okay. You want just to proffer  
20 that into the record?

21 MR. PELOKE: If you prefer, Your Honor.

22 THE COURT: Is that okay with the State?

23 MS. HANDEL: No, Your Honor.

24 THE COURT: It's not?

25 MS. HANDEL: No.

1 THE COURT: Okay, proceed, Counsel.

2 THE WITNESS: I became a breath-testing  
3 operator, got into breath-testing in 1974, as a  
4 police officer in Kansas. That's where I first got  
5 into breath-testing. I've been a breath operator  
6 on seven different machines. The Intoxilyzer, I  
7 first became involved with the Intoxilyzer series,  
8 specifically the 64 series, when it began in  
9 nineteen eighty -- late '84, early '85. I was with  
10 the Broward Sheriff's Office. I was the  
11 administrative coordinator of the DUI Task Force  
12 and, also, the Traffic Homicide Unit at the time,  
13 four of the six years that I was there.

14 THE COURT: Is that a law enforcement or an  
15 administrative position?

16 THE WITNESS: Law enforcement. I was a deputy  
17 sheriff with the Broward Sheriff's Office.

18 Our testing facility, at that time, was  
19 one of the three that were chosen in the state to  
20 actually work with the Intoxilyzer, meaning that  
21 the state, at that time, was attempting to decide  
22 which machine they were going to. At that time,  
23 there was three or four machines that were approved  
24 for use by the state. We -- meaning myself and  
25 another deputy, named Deputy David Fries (ph.), we

1 tested that machine, for approximately a six-month  
2 period of time. We tested that against the 4011  
3 and, also, some alpha sensors, which the state was  
4 considering to purchase at the time. We ran a  
5 series of tests on it, for six months. The results  
6 of that went to our supervisors and went to HRS at  
7 the time. Eventually, the Intoxilyzer was approved  
8 by the state and put into service, I believe,  
9 probably, in '86, as the only machine that was  
10 going to be used. I did blood and breath  
11 correlations with the state during that period of  
12 time, specifically with Walter Matusak (ph.) and,  
13 also, George Kuplowski (ph.) of the Broward Medical  
14 Examiner's Office, also Al Luport (ph.) of the Dade  
15 County Training Division.

16 During that period of time, in 1986, I  
17 became an instructor for the State of Florida.

18 THE COURT: Instructor of what? Using the  
19 machine, or what?

20 THE WITNESS: Yes, in using the machine and,  
21 also, a DUI instructor for the National Highway  
22 Traffic Safety Administration.

23 Various tests were conducted on the  
24 Intoxilyzer, some court-ordered; some were  
25 requested by the agency; some were requested by



1           HRS. And those tests primarily consisted of blood  
2           samples being taken from individuals at the same  
3           time that breath samples were taken. We also ran a  
4           series of tests on the slope detector.

5                           DIRECT EXAMINATION (Continued)

6           BY MR. PELOKE:

7           Q.    What is the slope detector, for those of us who  
8           are not familiar with that?

9           A.    Well, the slope detector is used, primarily, to  
10          attempt to ascertain a reading that is -- in other words,  
11          that rises very rapidly or falls very rapidly. In other  
12          words, the slope detector is meant to pick up rapid rise  
13          in alcohol, and that could be from mouth content; it  
14          could be from a number of other factors.

15                    In 1990, I went into private practice --

16          Q.    Excuse me, just for a second.

17          A.    Uh-huh.

18          Q.    Is the -- one of the purposes of the slope  
19          detector to detect the presence of mouth alcohol?

20          A.    Well, that's the purpose of it, yes. However,  
21          the way that it's tested is what I call -- first of all,  
22          it's not a reliable way of testing, the slope detector,  
23          because it's not -- it's not tested in field conditions.  
24          In other words, the way that it's tested by the state is  
25          that individuals take mouth alcohol, swish it in their

1 mouth, spit it out, and blow into the machine. That's  
2 not a field test. In other words, very few DUI suspects  
3 come into the station, have a couple of beers with the  
4 officer, and blow into the machine. That's not the way  
5 that that's tested.

6 We tested the slope detector under what we call  
7 optimal field conditions, meaning that individuals who  
8 are arrested by the police obviously do not have alcohol  
9 to drink or consume once the officer comes into contact  
10 with them. We test individuals that have -- that burp,  
11 that throw up, that make themselves burp, that throw up.  
12 We test individuals that have dentures, whether they be  
13 uppers, lowers, partials. We test them with all kinds of  
14 bonds, whether they be sea bonds, PolyGrip, DentuGrip,  
15 mouthwashes. The list goes on and on and on.

16 THE COURT: Now, when you say bonds, you're  
17 talking about the adhesives that are used with  
18 dentures?

19 THE WITNESS: Well -- correct, Your Honor.  
20 There are two types of adhesive, one that we  
21 quantify as a liquid or a substance, and the second  
22 one is like a sea bond, where it's like a -- kind  
23 of like a sponge, that the individual takes this  
24 -- sponge and they put it in the water and it kind of  
25 forms to their dentures. Then they place the

1 dentures in their mouth and, of course, alcohol and  
2 other things get trapped because the purpose of  
3 this bond is to -- is to stay wet, in other words,  
4 to stay formed. And as things are eaten or  
5 consumed, or whatever, during the day, it actually  
6 sticks in your mouth.

7 THE COURT: Right.

8 THE WITNESS: So, the purpose of that is, is  
9 to ascertain, you know, exactly if it will retain  
10 mouth alcohol.

11 And those studies were done, initially --  
12 and that's actually what got into the questioning,  
13 in the early '80's, about false teeth, because we  
14 knew that the early machines, the 4011's and some  
15 of the other ones that I was dealing with, and the  
16 900 series, would not pick up mouth alcohol, so we  
17 kind of had to be extremely careful, at that period  
18 of time. And then, once we got the Intoxilyzer  
19 series, which had what we called the first real  
20 mouth alcohol detector, we tested and found that  
21 that thing failed, about fifty percent of the time.  
22 So, part of the reason --

23 THE COURT: When you say failed, meaning what?

24 THE WITNESS: Meaning that it did not pick up  
25 the presence of mouth alcohol.

1 THE COURT: Okay.

2 THE WITNESS: In other words, it always  
3 worked, if there was a rapid rise and a rapid fall.  
4 But the problem, again, like I said, is over a  
5 period of time, and that's where the machine would  
6 not detect it. So, that was the initial studies  
7 that were done by the agency and myself and Deputy  
8 Fries, at that period of time.

9 Once that was completed, I went into  
10 private practice, and then I started working with  
11 other individuals, mainly Dr. Jensen in Minnesota,  
12 and his field was looking at the detectors, the  
13 time-pressure slope on the machine. And for the  
14 past six or seven years, I've been working with all  
15 three models. There are three models of  
16 Intoxilyzers, the 64, 66, and 68 series. And those  
17 are tested -- I've tested those, hundreds and  
18 hundreds of times. And, basically, the studies  
19 prove the same, that --

20 MS. HANDEL: Objection. We're going for his  
21 qualifications.

22 THE COURT: Okay, I'll sustain that objection.  
23 Right now, we're just getting the qualifications.

24 THE WITNESS: Okay. I was just trying to  
25 answer what the Judge asked.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Right.

DIRECT EXAMINATION (Continued)

BY MR. PELOKE:

Q. What is your belief on the stock solution used to simulate mouth alcohol and how that either affects the final reading for the state and properly calibrates their machine or not?

A. On the stock solution?

Q. Yes, that they use to simulate mouth alcohol in an ordinary suspect.

A. Well, that's not a true-to-life example.

Q. And why is that?

A. Well, again, because you are actually putting some of the alcohol -- you have a very high reading in your mouth, which could be five, six, or seven. I mean, you have triple and quadruple the readings. And a person could actually almost smell that, tell that there's mouth alcohol, because of such a high reading.

Q. Have you done independent scientific studies yourself relating specifically to the slope detector and mouth alcohol?

A. Yes.

Q. About how many times have you performed these studies?

THE COURT: This is -- what's the slope

1 detector? Is that a machine or what? I'm not sure  
2 I follow you on that.

3 THE WITNESS: The slope detector is software  
4 which is -- mechanical software which is built into  
5 the Intoxilyzer 5000.

6 THE COURT: Oh, it's part of it.

7 THE WITNESS: It's part of the -- it's a  
8 safety -- called a safety feature. And the slope  
9 detector kicks in at about four to 4.2 seconds  
10 after a breath sample is initiated, meaning that,  
11 if you have -- the breath test -- to get a positive  
12 breath test on the machine, to where you'll  
13 actually get a reading, could take six seconds --  
14 take about six to 6.2 seconds before it's an  
15 acceptable reading. If you have a reading less  
16 than that, the slope detector does not actually  
17 kick in. You will not know if you have mouth  
18 alcohol or not, basically.

19 BY MR. PELOKE:

20 Q. And your reason for stating that this stock  
21 solution does not properly simulate the human condition  
22 of actually ingesting alcohol is, again, for what reason?

23 A. Well, it's just -- it's not a true-to-life  
24 example. I mean, if you could equate taking a bottle of  
25 your -- a drink, whatever, dumping it into the machine,

1 I mean, obviously, you can't do that, but that's the same  
2 thing. I mean, it's not a real-life field test. It's  
3 not something that happens in the field.

4 Q. Have your studies included analysis of what  
5 percentage of mouth alcohol the slope detector does pick  
6 up?

7 A. Well, there's no way you can quantify that, as  
8 far as the percentage of mouth alcohol goes. You can  
9 only quantify it, from the period of knowing what you  
10 take into the mouth and knowing how quick you blow.  
11 That's the only thing you can quantify.

12 THE COURT: I don't have a clear picture in my  
13 mind what the slope detector does. If there is  
14 mouth alcohol present, what does the slope detector  
15 do?

16 THE WITNESS: It flags the machine and spits  
17 the card out and tells --

18 THE COURT: Says it was a bad test.

19 THE WITNESS: It says -- well, it says that  
20 there's mouth alcohol, and it does three asterisks  
21 on the card and spits the card out to the officer.  
22 In other words, there is no numerical reading,  
23 although the officer can see a numerical reading  
24 --on --

25 THE COURT: Yes.

1 THE WITNESS: -- on the screen --

2 THE COURT: Sees why it's -- he not only sees  
3 that it's a bad reading, he sees why it's a bad  
4 reading.

5 THE WITNESS: Right.

6 THE COURT: Now, what is the slope detector  
7 actually detecting? Is there, like, more alcohol  
8 there and it drops fast, or what?

9 THE WITNESS: It's detecting the rapid rise.  
10 In other words, a good breath sample will start off  
11 low and it will rise until it reaches a peak.

12 THE COURT: Okay.

13 THE WITNESS: In other words, if the mouth  
14 alcohol continued to rise -- let's say, the guy  
15 could blow for two minutes. It would continue to  
16 take the sample, that whole time, as long as  
17 there's a rise. It looks for two things, a rapid  
18 rise -- in other words, if you start at, say, a  
19 .000 and, all of a sudden, the first initial breath  
20 is put in at a four-oh (sic), it's going to fly to  
21 the top. As you continue blowing, the mouth  
22 alcohol sometimes will dissipate. So, if it goes  
23 from, let's say, a zero-zero (sic) to a one-oh  
24 --(sic) to a four-oh (sic) to a two-oh (sic) to a  
25 three-oh (sic) and back, that will kick off the



1 trigger and let the machine know, look, I'm not  
2 getting the nice even breath; something's wrong.

3 THE COURT: Okay.

4 DIRECT EXAMINATION (Continued)

5 BY MR. PELOKE:

6 Q. Is it accurate to state that the slope detector  
7 will only pick up high content of mouth alcohol?

8 A. Generally, yes. It'll also -- if the reading  
9 is stable, in other words, the reading begins to  
10 stabilize, at some point during the blow, it will not  
11 detect mouth alcohol if it's present. It just depends on  
12 the amount of mouth alcohol and what the machine  
13 technically sees. That's what it depends on.

14 Q. Would it also be accurate to state, then, with  
15 lower levels of alcohol, the slope detector would not  
16 detect these lower levels and they could improperly  
17 elevate the reading of the suspect's breath alcohol test?

18 THE COURT: That's two questions.

19 THE WITNESS: Yeah, why don't you give me one  
20 at a time?

21 MR. PELOKE: Okay.

22 THE COURT: You can answer both questions. I  
23 just -- divide it up.

24 THE WITNESS: Yes, it will not -- it won't  
25 flag the officer and it may not detect it. That's